

37 Am. Jur. 2d Fraud and Deceit § 120

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Fraud and Deceit

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IV. False Representations

F. Intent to Deceive, or to Induce Reliance; Knowledge of Falsity

2. Knowledge of Falsity

§ 120. Belief in truth of representation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Fraud 13(2)

In some jurisdictions, the existence of an honest belief that a representation is true is a good defense to an action for deceit,¹ at least where the representations are made for an honest purpose,² and where there is no duty on the part of the person sought to be charged to know the truth.³ The rule is peculiarly applicable to the expression of an honest opinion, estimate, or judgment⁴ regardless of the question of its reasonableness.⁵

Caution:

An honest belief in the truth of a representation does not preclude an action for negligent misrepresentation.⁶

In some states, the assertion, as a fact, of that which is not true by one who has no reasonable ground for believing it to be true,⁷ or which the person has good reason to know is false,⁸ constitutes fraud, especially where a statement is made unqualifiedly or as of the personal knowledge of the speaker.⁹ On the other hand, in some jurisdictions, an action of deceit will not lie against one who makes a false representation which the speaker honestly believes to be true merely because the speaker has no reasonable

grounds for such belief or because the speaker relies on information which a wiser person might not credit.¹⁰ However, it has also been said that although the means of knowledge are a very different thing from knowledge, if a person who makes a false statement shuts his or her eyes to the facts or purposely abstains from inquiring into them, the person has no honest belief in their truth and is just as guilty of fraud as if he or she knowingly states that which is false.¹¹

Observation:

Generally, making a misrepresentation without reasonable ground for believing it to be true is an element of the separate tort of negligent misrepresentation.¹²

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Footnotes

- 1 South Branch Lumber Co. v. Ott, 142 U.S. 622, 12 S. Ct. 318, 35 L. Ed. 1136 (1892); Pickrell & Craig Co. v. Bollinger-Babbage Co., 204 Ky. 314, 264 S.W. 737 (1924); Rothermel v. Phillips, 292 Pa. 371, 141 A. 241, 61 A.L.R. 489 (1928).
An unintelligent but honest defendant does not satisfy the test of scienter for purposes of the tort of false representation. *Palmacci v. Umpierrez*, 121 F.3d 781 (1st Cir. 1997).
- 2 Pickrell & Craig Co. v. Bollinger-Babbage Co., 204 Ky. 314, 264 S.W. 737 (1924).
- 3 Pickrell & Craig Co. v. Bollinger-Babbage Co., 204 Ky. 314, 264 S.W. 737 (1924).
- 4 As to the effect of a duty to know the truth, see § 121.
Haigh v. White Way Laundry Co., 164 Iowa 143, 145 N.W. 473 (1914); *Pickrell & Craig Co. v. Bollinger-Babbage Co.*, 204 Ky. 314, 264 S.W. 737 (1924).
- 5 *Pickrell & Craig Co. v. Bollinger-Babbage Co.*, 204 Ky. 314, 264 S.W. 737 (1924).
- 6 § 128.
- 7 *Brookings Mun. Utilities, Inc. v. Amoco Chemical Co.*, 103 F. Supp. 2d 1169, 42 U.C.C. Rep. Serv. 2d 470 (D.S.D. 2000) (applying South Dakota law); *B.L.M. v. Sabo & Deitsch*, 55 Cal. App. 4th 823, 64 Cal. Rptr. 2d 335 (4th Dist. 1997).
- 8 *Hanson v. Johnson*, 143 Or. 532, 23 P.2d 333 (1933).
- 9 *Schlechter v. Felton*, 134 Minn. 143, 158 N.W. 813 (1916).
As to statements made as of personal knowledge, unqualifiedly and recklessly, see §§ 122, 122.
- 10 *Boddy v. Henry*, 113 Iowa 462, 85 N.W. 771 (1901).
- 11 *State Street Trust Co. v. Ernst*, 278 N.Y. 104, 15 N.E.2d 416, 120 A.L.R. 1250 (1938).
- 12 § 128.